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CASE STUDY

Cadence Design Inc., a U.S. chip maker, filed a lawsuit in 1995 after learning that one of its engineers had stolen Cadence's proprietary sourcecode shortly before leaving the company. Cadence's IT department noticed that large amounts of data had been transmitted out of the company's system, which alerted them to the wrongdoing. Investigations into the incident revealed that the engineer had stored proprietary software on a personal computer, and the pirated software was being incorporated into products sold by a competitor. Coincidentally, the competitor company, Avant, was formed by four other former Cadence employees. A copyright infringement lawsuit was filed by Cadence claiming that the former employees had stolen the sourcecode to start the new business. Additional securities

fraud class actions were filed by shareholders. A criminal suit was also brought against the engineer. Experts carefully documented forensic evidence from network logs at Cadence and the engineer's personal computer before trial. Further evidence was obtained from the sourcecode used by Cadence and the error codes designed into the code that Avant was duplicating in the code that Avant was selling in its products. Avant has since settled the class action for \$47 million and on May 22, 2001, pleaded guilty to charges of stealing the trade secrets. As a result of the plea agreement, Avant agreed to pay \$1 million, plus restitution. The individual engineer

the theft of sourcecode will pay \$8 million in fines and serve jail sentences ranging from one to six years.

The trial reflects the importance of trade secrets, and in today's competitive climate, trade secrets may be all that differentiates one company from another, thus enhancing the need for security. It's not uncommon these days for one company to try to steal an employee from another with the offer of greater competition in the hopes of removing the asset from being available to the competitor, and also that the employee will bring trade secrets that can be exploited by the competitor. At the same time, this practice gives rise to lawsuits between rival companies. Recently, Compaq and Trident Microsystems have filed similar lawsuits against competitors claiming trade secrets were stolen. More unusual in the Avant case is the tough sentences handed down against the employees involved in the theft, but even these cases are becoming commonplace.

Confidential company information does not always involve high-tech gadgetry. Recently, the New Jersey Supreme Court ruled on behalf of an employer who had filed suit against two former employees for stealing client lists and customer data. Similar to the Avant case, the employees decided to leave their employer and open a competing business. While they still had the trust of the current employer, they secretly gathered information

regarding specific client accounts. Upon the employee's departure, all of the information that had been obtained had gone with the new employee.

Certainly the employees involved in the Avant case had a good working relationship with their employer. The information the employees used from their former employer was legally protected since it was obtained during the course of employment and was used for the sole purpose of serving the client. In the Avant lawsuit, and the court ruled that the former employees breached their duty of loyalty and that they had actively sought to use the information to provide a competitive advantage to their new business.

1. What steps can companies take to protect their trade secrets?
2. With more persons working remotely, how can one separate data intended for the company from data that might be considered personal property?
3. What policies could be put in place to ensure employees adhere to safe guidelines for handling confidential company data?

SOURCE: Based on CNET news, "Avant case to begin," March 14, 2001.



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